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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

J.L., v. THE SUPERIOR COURT OF ORANGE COUNTY, Respondent; ORANGE COUNTY SOCIAL SERVICES AGENCY et al., Real Parties in Interest.	G049202 (Super. Ct. No. DP023997) O P I N I O N

Original proceedings; petition for a writ of mandate/prohibition to challenge an order of the Superior Court of Orange County, Deborah C. Servino, Judge. Petition denied.

Frank Ospino, Public Defender, Dave Dziejowski, Assistant Public Defender, Scott K. Kawamoto and Dennis M. Nolan, Deputy Public Defenders, for Petitioner.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Julie J. Agin, Deputy County Counsel, for Real Party in Interest.

Law Offices of Harold LaFlamme and Linda O'Neil for Minor.

Jessica Nerney for A.L.

* * *

J.L. (Mother) seeks review of the juvenile court's order bypassing family reunification services and scheduling a permanency planning hearing for her son, J.L. (Welf. & Inst. Code, § 366.26, subd. (c),[1] (hereafter the section 366.26 hearing.) The juvenile court denied Mother reunification services because she had a history of chronic use of drugs and alcohol and resisted prior court-ordered treatment for her substance abuse problem. (§ 361.5, subd. (b)(13).) Substantial evidence supports the decision to bypass reunification services, and we deny Mother's petition for an extraordinary writ.

FACTS AND PROCEDURE

Detention

Mother has an extensive alcohol and substance abuse history dating back to at least 1995. She admits she is a binge drinker. She has had numerous drug related arrests and convictions, and many assault, battery, and domestic violence arrests and convictions.

Mother had five children with her estranged husband, A.L. There were several child abuse reports involving those children. Mother had received voluntary services for about seven months in 2009, but her participation was limited. She refused to participate in individual counseling and did not attend family counseling. Mother's five older children were placed in the custody of their father by the family court and on December 9, 2010, he obtained a three-year domestic violence restraining order against her. The domestic violence restraining order included the family court's order that

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1 All further statutory references are to the Welfare and Institutions Code.

"Mother must attend [a] parenting program with [a] drug component. Mother must mail proof of enrollment and completion to this department." Subsequent to that order, Mother had a 2012 arrest for being drunk in public and was ordered by the criminal court to attend Alcoholics Anonymous (AA).

J.L. was born in July 2012, and his father's identity was unknown. Mother rented a room in a house in Anaheim where she and J.L. lived with other tenants. On July 15, 2013, one-year-old J.L. was taken into protective custody by the Orange County Social Services Agency (SSA) after being left home alone while Mother was out drinking and using illegal substances. The maternal grandmother telephoned Mother in the late afternoon the day before and Mother sounded intoxicated. Mother later called the maternal aunt and said J.L. was being watched by a friend who might have left the home.

The maternal grandmother called the police after finding J.L. alone in the room Mother was renting. Mother arrived about 20 minutes after the maternal grandmother. She gave police "different explanations of care arrangements she made for the child, however after police spoke with the individuals, they did not corroborate [M]other's statements."

Eventually, Mother told police she was too drunk to remember who she left J.L. with, or what had happened the night before. Garden Grove police had arrested her the night before for being under the influence of a controlled substance and released her in the morning. The police officers observed Mother still appeared to be under the influence and did not feel comfortable leaving the child in her care. The bedroom she shared with J.L. was not clean. There were clothes and food on the floor and empty beer containers in the trash can. The officer found a baby bottle filled with sour milk. The officer made a fresh bottle for J.L., but Mother refused to give it to him and instead poured it out on the floor.

The maternal grandmother reported Mother had a history of alcoholism and drug use. She reported Mother typically did not provide adequate care for the child, not

feeding him and leaving him for days with friends. The maternal grandmother stated Mother often became violent when she drinks alcohol. The maternal grandmother said she had initiated the court process to obtain legal guardianship of J.L., but did not follow through because Mother threatened to kill the child if she did so. The maternal grandmother had an active restraining order against Mother.

Mother's estranged husband, A.L., explained to social workers he was with Mother on July 14, 2013, when she left J.L. alone, and she was arrested for shoplifting diapers and detergent. A.L. thought someone named "Miguel" was J.L.'s father and had assumed the child was with his father at the time. A.L. reported Mother is an alcoholic and she also used methamphetamine. A.L. said Mother had a history of leaving her children without making proper arrangements, which was why he now had full custody of their five children and Mother had no contact with them. Mother had once left J.L. in A.L.'s care for four days without providing any food, clothing, or diapers for the baby. A.L. was very concerned about J.L.'s safety because "'he's filthy'" and Mother does not adequately care for him. He felt Mother was "'an excellent mother when she's sober,'" and thought services could help "'get her life together.'"

Mother told social workers she had prior arrests for drinking alcohol in public. Mother admitted that as a result of a 2012 arrest for being drunk in public, she was ordered by the criminal court to attend AA meetings. Mother said she drank "'a 40 oz'" in the room before leaving on the night of July 14, 2013, and someone named "Juan" was supposed to be watching J.L. She claimed A.L. had taken her to buy more alcohol when she was arrested. Mother admitted "she binges" when she drinks.

J.L. was initially placed with the maternal grandmother, but he was moved to a foster home on July 17, 2013. SSA filed a petition alleging jurisdiction under section 300, subdivision (b) [failure to protect]. At the detention hearing, the juvenile court detained A.L. It ordered SSA to begin reunification services "as soon as possible,"

ordered random drug and alcohol testing, including secured alcohol monitoring devices for Mother, and gave Mother a minimum of six hours weekly monitored visitation.

Jurisdiction/Disposition

In its first jurisdiction and disposition report, the SSA social worker requested additional time to investigate whether section 361.5, subdivision (b)(13), applied to Mother due to her unresolved substance abuse problem. J.L.'s caregiver reported Mother brought an unidentified man with her to the July 23 visit with J.L., but the caregiver would not permit him to attend. During the visit Mother was very "rough" with J.L., and when the caregiver told her not to pull at the child, Mother became upset. Mother "did not appear to focus on her visit." A social worker who monitored the visit reported "unusual activity" was going on during the visit. Mother was "sweating profusely" and appeared "distracted and not focused on the child." The social worker confirmed Mother was rough in her handling of J.L. Mother declined a visit on July 25.

Mother was provided with referrals to the Health Care Agency (HCA) Perinatal Program, Medtox drug testing, self-help meetings (AA, NA), and parenting programs. She was instructed to keep the social workers updated on her progress, and for the past month she had done so. She began twice weekly drug testing on July 29, 2013.

Mother met with the social worker on July 25, 2013, and explained she was currently unemployed and renting a room in a house, but did not know the address. She reported she only used alcohol, and denied using drugs. Mother wanted reunification services.

On July 26, 2013, the caregiver reported Mother again brought an unidentified man to her visit with J.L. The man refused to provide his name to the social worker, and when the social worker instructed Mother to make sure her friend did not show up again on visits, Mother stated, "'You tell him, I already told him and he doesn't listen to me.'" On July 29, Mother brought two of her older children to the visits with J.L., and the social worker again had to remind her she could not bring anyone to visits

without permission. On another visit, Mother brought the maternal grandmother without getting the social worker's permission.

On August 1, 2013, Mother was unable to void for a drug test. The social worker later contacted Mother to give her information concerning the Secure Continuous Remote Alcohol Monitoring program. When Mother said she did not want the information, the social worker explained it had been ordered by the court and that it would benefit Mother to have it. Mother was not happy about it.

In its September 5, 2013, jurisdictional and dispositional report, SSA recommended no reunification services be provided to Mother. Although Mother had one negative Medtox test in early August, she missed five drug tests, was no longer actively participating in HCA or STARR Programs, was not making daily calls to the social worker, could not verify her attendance at AA or NA meetings, and was going to be discharged from her perinatal program for non-compliance.

The social worker reported services could be denied under section 361.5, subdivision (b)(15), due to Mother's "willful abduct[ion]" of J.L.'s siblings. The maternal grandmother had been caring for Mother's five older children. The maternal grandmother reported that on August 25, 2013, Mother showed up drunk at her home and said she was taking the children to the movies. She started yelling at the maternal grandmother for removing a television from one of the children's bedrooms. She accused the maternal grandmother of bringing strange men around to molest the girls. The maternal grandmother had a handyman working at the house at the time. Mother attacked the handyman and then took off with two of the girls. The maternal grandmother called the police, but Mother was gone before they arrived. J.L.'s caretaker said she talked to Mother on August 26, and Mother "sounded 'nervous, like out of it.'" Mother was arrested on August 27. Her older daughter had not yet returned to the maternal grandmother's home and a protective custody warrant was issued for the child.

In the September 5, 2013, report, the SSA social worker noted, "In regards to [Mother's] alcohol abuse history: [She] has never been on formal probation and/or ordered to participate in the Prop 36 Program. [She] has also never been ordered by the [c]ourt to participate in a drug and alcohol treatment program until last month, when [J.L.] was brought into protective custody." However, "[Mother] has an unresolved substance abuse problem evidenced by her recent arrest, which seriously impairs her ability to supervise, protect, or care for [J.L.]"

Jurisdictional and Dispositional Hearings

At the jurisdictional hearing on September 16, 2013, Mother submitted on the social worker's reports. The court found the allegations of the petition to be true by a preponderance of the evidence. Minor's counsel argued section 361.5, subdivision (b)(13), applied to Mother, and Mother should be denied reunification services based upon the 2010 family court order that "required Mother to do drug treatment." County Counsel observed that "we had alleged there was a potential [section 361.5, subdivision] (b)(13) bypass . . . ." A dispositional hearing was set for October 21, 2013.

On October 21, 2013, the social worker reported J.L. was doing well in his placement. Mother contacted the social worker when she was released from custody on September 25, saying she wanted to reinstate visitation. The social worker asked Mother if she intended to resume participating in services, and Mother stated she would call Medtox that day and would go to HCA the next day. The next day, at a visit with J.L., Mother told the social worker she had lost the Medtox number and could not recall her assigned color. On September 30, Mother told the social worker she was considering entering an inpatient program, although she was concerned about the effect of a 30-day lockdown on her upcoming court date. On October 5, Mother called the social worker to ask what services she was supposed to be doing.

At the dispositional hearing on October 21, 2013, the juvenile court took judicial notice of the domestic violence restraining order issued on December 9, 2010, in Orange County Superior Court case No. 05D003219. The domestic violence restraining order awarded physical and legal custody of Mother's five older children to their father, A.L., and allowed visits with Mother every other weekend. It ordered, "Mother must attend [a] parenting program with [a] drug component. Mother must mail proof of enrollment and completion to this department."

At the dispositional hearing, Mother's counsel argued the family court domestic violence restraining order was insufficient to establish prior "court-ordered treatment" for her alcohol and substance abuse problem for purposes of allowing the court to bypass services under section 361.5, subdivision (b)(13). Additionally Mother's counsel argued there was insufficient evidence Mother had resisted treatment. The juvenile court removed custody from Mother, and found by clear and convincing evidence section 361.5, subdivision (b)(13), applied and reunification services need not be provided to Mother. It scheduled a section 366.26 hearing for February 18, 2014.

DISCUSSION

Mother contends there is insufficient evidence to support bypassing reunification services under section 361.5, subdivision (b)(13). She argues there is no evidence she was ever ordered by a court to obtain substance abuse treatment and there is insufficient evidence she resisted any such treatment in the past three years. We disagree.

When a juvenile court's decision to bypass reunification is challenged, we apply the substantial evidence rule. (*In re Brooke C.* (2005) 127 Cal.App.4th 377, 382.) "We review the record in the light most favorable to the trial court's order to determine whether there is substantial evidence from which a reasonable trier of fact could make the necessary findings based on the clear and convincing evidence standard. [Citation.]" (*In re Isayah C.* (2004) 118 Cal.App.4th 684, 694, italics omitted.) "Clear and

convincing evidence requires a high probability, such that the evidence is so clear as to leave no substantial doubt." (*In re Luke M.* (2003) 107 Cal.App.4th 1412, 1426.)

"There is a presumption in dependency cases that parents will receive reunification services. [Citation.] Section 361.5, subdivision (a) directs the juvenile court to order services *whenever* a child is removed from the custody of his or her parent *unless* the case is within the enumerated exceptions in section 361.5, subdivision (b). [Citation.] Section 361.5, subdivision (b) is a legislative acknowledgement 'that it may be fruitless to provide reunification services under certain circumstances.' [Citation.]" (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 95-96.)

Here, the juvenile court denied reunification services to Mother based on section 361.5, subdivision (b)(13), which allows for bypass if two requirements are met. The first requirement is a finding, by clear and convincing evidence, that the parent has "a history of extensive, abusive, and chronic use of drugs or alcohol." (*Ibid*.) Mother does not challenge the juvenile court's finding she has such a history. And the substantial evidence in the record of her alcohol and substance abuse; her drug-related arrests and convictions; her assault, battery, and domestic violence arrests and convictions; and her loss of custody of her five older children support that finding.

The second requirement is a finding, by clear and convincing evidence, that the parent "has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court's attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by [s]ection 358.1 on at least two prior occasions, even though the programs identified were available and accessible." (§ 361.5, subd. (b)(13).)

Prior to 2003, the first prong of subdivision (b)(13), did not specify that reunification could be denied for resisting only court-ordered drug or alcohol treatment. Thus, a parent who continued or resumed substance abuse use after having *voluntarily*

undertaken such treatment could be denied reunification services. (See *Karen H. v. Superior Court* (2001) 91 Cal.App.4th 501, 504-505.) However, the statute was amended in 2002, adding the phrase "court-ordered." (Stats. 2002, ch. 918 (AB 1694), § 7); 73A Pt. 1 West's Ann. Welf. & Inst. Code (1998 ed.) foll. § 361.5, p. 147.) This was done specifically to clarify that "in order to completely forgo reunification services due to a parent's failure to complete past drug treatment, the previous drug treatment must have been ordered by the court, not entered into voluntarily." (Sen. Com. on Health & Human Services, Aug. 28, 2002, pp. 1-2, Analysis of Assem. Bill 1694.)

Mother contends there is no evidence the court previously ordered her to engage in a drug or alcohol treatment program. She contends the family court's order made as part of the 2010 domestic violence restraining order obtained by A.L., that Mother must "attend [a] parenting program *with [a] drug component*[,]" (italics added), does not constitute a court order for substance abuse "treatment." She argues there was nothing in the family court order from which the juvenile court could infer the family court intended to "*rehabilitate* Mother or *treat* a substance abuse problem." Indeed, she argues, there is nothing in the order suggesting the family court even thought Mother was "a parent in need of substance abuse rehabilitation." She argues the fact the family court awarded her unmonitored visits with her children every other weekend suggests it did not believe Mother had a substance abuse problem.

We reject Mother's contention. Section 361.5, subdivision (b)(13), does not narrowly define what constitutes "court-ordered treatment" for purposes of applying the services bypass as Mother suggests. The only requirement is the treatment must be court-ordered, as opposed to voluntary. The family court ordered Mother to complete a parenting program with a drug component. The only logical reason for the family court to have made such an order was because it concluded Mother had a substance abuse problem that prevented her from effective parenting and contributed to the violence that lead to issuance of the three-year restraining order against her. Moreover, it was not a

mere suggestion by the family court—she was directly ordered to provide proof to the family court that she enrolled in and completed the program. Additionally, that was not the only time a court ordered Mother to obtain substance abuse treatment. Mother admitted that as a result of a 2012 arrest for public intoxication, she was court-ordered to attend AA meetings. In short, substantial evidence supports the juvenile court's conclusion Mother had been ordered by a court to obtain treatment for her drug and alcohol problems.

Mother also contends there is insufficient evidence she resisted court-ordered substance abuse treatment in the three years before the current petition was filed. Her argument is this regard is somewhat confusing. Mother does not suggest she effectively participated in treatment. Proof of resisting prior court-ordered treatment may come in the form of refusing to enroll in a program, dropping out of a program, or resumption of regular substance abuse even after completing a program and a period of sobriety. (See *In re Brian M.* (2000) 82 Cal.App.4th 1398, 1403; *Karen S. v. Superior Court* (1999) 69 Cal.App.4th 1006, 1010.) There is nothing in the record indicating whether Mother ever complied with the family court order that she complete a parenting program with a drug component. Rather Mother's argument seems to be about timing, i.e., that in argument below, minor's counsel and SSA referred to conduct that occurred *before* the family court order was made in December 2010 and after the petition was filed. Thus, Mother contends, her resistance to court-ordered treatment was not within the prior three years.

Substantial evidence supports the juvenile court's finding Mother "resisted prior court-ordered treatment for [her alcohol and substance abuse] problem during a three-year period immediately prior to the filing of the petition . . . ." (§ 361.5, subd. (b)(13).) The family court order was made in December 2010. The maternal grandmother and A.L. both reported Mother continued to use alcohol and drugs. In 2012, she was arrested for possession of a controlled substance and being under the influence of

a controlled substance. She admitted a 2012 conviction for public intoxication. She admitted she continued to binge drink. With regard to the events that lead to J.L. being taken into protective custody in July 2013, Mother admitted drinking a "40 oz[,]" and leaving her one-year old baby behind while she went out drinking. She could not recall having made any arrangements for the child's safety while she was gone. She was arrested that night for being under the influence of a controlled substance. Substantial evidence supports the conclusion that despite having been court-ordered to complete a parenting program with a drug component, and having been court-ordered to participate in AA, Mother continued to abuse alcohol and drugs. The juvenile court could reasonably conclude Mother's behavior was not an isolated "slip up." She continued to demonstrate resistance to juvenile court ordered treatment after the petition was filed. In August 2013, she missed numerous drug tests and quit actively participating in services. She showed up intoxicated at the maternal grandmother's home, assaulted the handyman who was working there, and absconded with two of her daughters. She could not provide any proof she was attending AA meetings, and ceased regular contact with her social worker. Substantial evidence supports the juvenile court's decision to bypass reunification services based upon section 361.5, subdivision (b)(13).

DISPOSITION

The writ petition is denied.

O'LEARY, P. J.

WE CONCUR:

RYLAARSDAM, J.

THOMPSON, J.